OCT 27 1966

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 116

IN THE MATTER OF THE APPLICATION OF PAUL L. GAULT AND MARJORIE GAULT FATHER AND MOTHER OF GERALD FRANCIS GAULT, A MINOR.

BRIEF FOR APPELLEE

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OPINION BELOW, JURISDICTION, STATUTES INVOLVED, QUESTIONS PRESENTED

Pursuant to Rule 40, Subsection 3, Rules of the Supreme Court, 28 U.S.C., Rules, as amended (1965) appellee accepts appellants' presentation of the above referenced matters.

STATEMENT OF THE CASE

I.

Gerald Francis Gault had his first contact with the Arizona Juvenile process during July of 1962, when he was thirteen years of age. Gerald had been exposed to the Gila County Juvenile Court intake screening process at that time due to a referral by the Globe, Arizona Police Department concerning a theft. (R. 61) After an investigation no hearing was held. (R. 61) Two

years later, that is on February 2, 1964, Gerald was again referred to the Gila County Juvenile Court by the Globe Police Department. Gerald had allegedly violated Arizona Revised Statutes, Section 13-663 (A) *Grand Theft*, it being alleged that another juvenile, while in the company of Gerald and another minor, had taken a wallet from a third party's purse while at a local theater. (R. 4, 5) A petition was filed on Gerald on February 7, 1964, and a hearing in this regard was held on the 25th of that month. (R. 4) Judge Robert E. McGee, Judge of the Superior Court, Gila County, Arizona, presided at that hearing. (R. 69) Gerald was placed on a six-month's probation with the explicit instruction to (1) stay out of trouble, (2) obey his mother and (3) participate in certain group sessions. At the time of that hearing, Gerald's parents were warned of future possible consequences. (R. 66) Approximately four months later, on June 8, 1964, Gerald was again apprehended, this time by the Gila County Sheriff's office on a charge of lewd phone calls. At this time Gerald was still on probation from the previous juvenile court hearing. He was again referred to the Gila County Juvenile Court for the proceedings which are the subject of this appeal.

II.

THE FACTS

Appellants' Statement of the Facts is basically a correct summarization of the testimony adduced at the habeas corpus hearing held in the Superior Court of Maricopa County on August 17, 1964. Appellee does deem it necessary, however, to point out a few inexactitudes and supplement appellants' statement of the case

with some additional facts from that habeas corpus record which appellee considers essential to establish a clear format of the case.

It is correct that two hearings were held by Judge McGee in regard to the lewd phone calls. The first was on June 9, 1964, at which time, Gerald, his mother (Marjorie Gault), Gerald's older brother, Louis, Mr. Henderson, Gila County Chief Probation Officer, and Deputy Probation Officer Charles Douglas Flagg, were present. While Gerald did not testify at the habeas corpus hearing, the evidence taken at that same hearing is undisputed that Gerald did in fact testify at the June 9, 1964, juvenile hearing. At the habeas corpus hearing, Judge McGee testified that he had questioned Gerald on June 9 and that he (Gerald) "admitted that he had called the number of the lady — I have forgotten the name. He said that he had not done *most* of the talking on this occasion, that the other boy, the Lewis boy, had done most of it." (Emphasis added.) (R. 57) That Gerald had admitted at that time that he had said some lewd words. (R. 58)

Deputy Probation Officer Flagg, who was one of the probation officers present at the June 9th hearing, also testified at the habeas corpus hearing. He did *not* testify that "Gerald did not admit having made any lewd remarks and only dialed the number." (Appellants' Opening Brief, p. 6), nor did Deputy Probation Officer Flagg testify that "Gerald had never admitted to him that he used any indecent language over the telephone (R. 57)." (Appellants' Opening Brief, p. 7) To the contrary, Mr. Flagg testified that while both Gerald Gault and Ronald Lewis tried to place the blame

on each other during the June 15th hearing, Gerald had in fact, during the June 9th hearing, admitted making the phone call and saying the lewd words. (R. 45, 47)

During the habeas corpus hearing on August 17, Mrs. Marjorie Gault was asked by presiding Judge Fred A. Hyder if she knew at the time of the June hearings, of her right to have a lawyer to which Mrs. Gault answered in the affirmative. (R. 40) Mrs. Gault also indicated that, at the time of the hearing, she knew she could subpoena witnesses. (R. 40) She also testified that while she did not receive a copy of the June 9, 1964, petition, she was aware of the contents of the petition. (R. 40)

Deputy Probation Officer Flagg also testified at the habeas corpus hearing that he and Probation Officer Henderson had investigated the case. (R. 48) While it is correct as appellants assert (Appellants' Opening Brief, pp. 7, 8) that during June of 1964 no investigation was made to examine Gerald's home conditions, nowhere in the record is it substantiated that Probation Officers Flagg and Henderson did not conduct an examination into Gerald's behavior. To the contrary, Flagg testified that he did investigate the case from the 8th of June until the 11th of June. (R. 48, 49) As to an investigation of the condition of the Gault home, it is correct that Flagg had done so four months prior during the period when the first delinquency hearing on Gerald had been conducted.

III.

THE DECISION OF THE ARIZONA SUPREME COURT

On November 10, 1965, the Supreme Court of the State of Arizona affirmed the order of the Superior Court of Maricopa County in dismissing petitioner's writ of habeas corpus. The Court grouped the assignments of error presented to it into three categories. First, that the Arizona Juvenile Code, A.R.S., Sec. 8-201, *et seq.* was unconstitutional because it failed to appraise parents and children of the specific charges, did not require timely, adequate and proper notice of a hearing and did not provide for an appeal. Second, that the Juvenile Court, in fact, denied petitioner's due process of law by failing to provide proper notice of the charge and the hearing, failing to notify them of certain constitutional rights, by relying upon unsworn hearsay testimony, by failing to make a record and by removing custody of Gerald Francis Gault from his parents without a showing of their incompetency or inability to properly care for him. Third, miscellaneous errors pertaining to the habeas corpus proceeding and young Gault's original detention during June of 1964. (407 P.2d at 763, 764; R. 85, 86)

The Arizona Supreme Court in answering all assignments of error, held that the Arizona Juvenile Code was constitutional and petitioners were not denied due process of law as such pertained to the judicial course of events which led to Juvenile Judge McGee's commitment order. In holding the Arizona Juvenile Code to be constitutional and not in violation of procedural due process as required by the United States Constitution,

Article XIV, Section 1 and Article II, Section 4 of the Arizona Constitution, the court recognized that said code, in part, required the following:

1. That a parent or guardian and anyone whose rights may be affected by the court's determination, must be notified of the juvenile hearing by personal service if possible and such notice must be given a reasonable time prior to the hearing. (*Id.* at 766; R. 91)

2. That the powers of the Juvenile Court may be exercised upon the filing of a petition alleging that the child is delinquent but not the facts upon which the allegation is based. (*Id.* at 764; R. 86)

3. That the child and parent or guardian must be advised of the facts involved in the case no later than the initial hearing by the judge. (*Id.* at 767; R. 92)

4. If the charges are denied, the child and parent must be given a reasonable period of time to prepare. (*Ibid.*)

5. That the Arizona and United States guarantee of due process of law exists in the Arizona Juvenile Code. (*Id.* at 765; R. 88)

6. That the statutory requirement for a hearing under the Juvenile Code means a hearing in a substantial sense meeting the requirements of due process. (*Ibid.*)

7. That the Arizona Constitution (Art. VI, § 15) and Arizona Revised Statutes, § 8-229 require that juvenile hearings be held informally and in chambers. (*Id.* at 764; R. 87)

8. That the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. (*Id.* at 767; R. 92)

9. That the Juvenile Court always has discretion to allow legal representation. (*Ibid.*)

10. That due process does not require that an infant have a right to counsel. (*Id.* at 767; R. 93)

11. That the Arizona Juvenile Code does not require a juvenile judge to advise an infant of a privilege against self-incrimination. (*Ibid.*)

12. That under Arizona law there is no right of appea from a juvenile court order. (*Id.* at 764; R. 86)

13. That since there is no right of appeal and since the evidence adduced at a juvenile hearing is of a confidential nature and may not be admitted in other courts, the ordering of a transcript at a juvenile hearing is entirely within the discretion of the juvenile court. (*Id.* at 768; R. 94)

In regard to the contention that the juvenile court, in fact, denied petitioner's due process of law, the court opined (*ibid.*),

"Applying all of the above requirements to the hearing under review, we find that petitioners were not denied due process of law. Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home. She and Gerald appeared at the first hearing without objection. Mr. and Mrs. Gault, together with Gerald, appeared at the second hearing before Judge McGee without objection. Petitioners knew they could have retained counsel, called witnesses and cross-examined Probation Officer Flagg."

SUMMARY OF ARGUMENT

I.

The history of the Juvenile Court will indicate that it was created to afford individualized justice for the child. Further, the purpose was to shield the child from the stigma of criminality when the acts he performed would otherwise subject him to the criminal system. Rehabilitation was to be substituted for punishment. The State acts as *parens patriae*. These principles are as important today as they were in the year one of the juvenile court system. Appellee is the first to agree that the child in a juvenile court proceeding is entitled to due process of law but the question necessarily posed is what constitutes due process in such a proceeding. In answering this question one must be mindful not only of the specific rights involved as they relate to other areas of the law, but also of the nature of the proceeding and its devout attempt to avoid the non-adversary approach to juvenile problems. The Arizona Juvenile Code is framed in the spirit of the traditional juvenile court. It protects the child of tender years and provides him with due process of law. With more particularity, it provides due process in the areas henceforth to be noted.

II.

The Gerald Francis Gault hearings during 1964 were two of three hundred and sixty-five[1] held in Gila County that year before the Honorable Robert E. Mc-

[1] The yearly report of the Gila County Probation Department indicates that of six hundred and thirty-five cases handled, two hundred and seventy were adjusted at intake and three hundred and sixty-five were heard before the Juvenile Court, of which eleven were sent to the Ft. Grant Industrial School.

Gee, Gila County's lone Superior Court Judge.[2] Those hearings were conducted pursuant to the Arizona Juvenile Code which contemplates three phases of a juvenile hearing. First, jurisdictional, second, adjudicatory, and third, dispositive. The June 9th hearing was a jursidictional and adjudicatory hearing insofar as it resolved the question of Gerald's delinquency. The June 15th hearing was necessarily dispositive in nature since the decision to commit Gerald to the industrial school at Ft. Grant was made at that time. The Arizona Act further contemplates that if the child denies the act involved at the jurisdictional phase *then* he and his parents must be given a reasonable time to prepare a defense for the subsequent full-scale adjudicatory hearing. If, as here, the act is admitted, the court has completed both the jurisdictional and adjudicatory phases of the proceeding.

III.

The Arizona Juvenile Code requires notice of the hearing to the parent or guardian by personal service if practical. On June 8th, Mrs. Gault was personally notified of the hearing to be held the following day. At that time, she was informed of the nature of the charges against Gerald and she was further informed of the time and place for the hearing. She voluntarily appeared at the June 9th hearing where she was again informed of the general nature of the charges against her son. Mr. and Mrs. Gault were given written notice of the June 15th hearing on June 12th and both parties

[2] Art. 6, § 10 of the Arizona Constitution provides that each county shall have at least one judge of the Superior Court and each county may have additional judges, not exceeding one judge for each 30,000 inhabitants or majority fractions thereof. According to the 1960 census Gila County has a population of 25,745.

voluntarily appeared at the latter hearing. We submit petitioners were provided with procedural due process of law in this regard.

IV.

The Arizona Supreme Court held that due process of law in regard to a juvenile hearing does not require that an infant have a right to appointed counsel. However, the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. Mrs. Gault testified during the habeas corpus hearing that at the time of the June 9th and June 15th hearings she was aware of her right to retain counsel. We do not see where the Arizona Juvenile Code is unconstitutional in this respect, nor do we see where, on the facts, petitioners were denied due process of law.

V.

Gerald Francis Gault admitted to Judge McGee during the June 9th jurisdictional and adjudicatory hearing that he had said some of the lewd words. This admission obviated the need for a full adjudicatory hearing. On this basis appellee contends that there was no necessity for a confrontation with the complaining witness nor a cross-examination of her. We submit that while an infant and his or her parents are entitled to confrontation and cross-examination when the charges are denied, said argument has no relevance in this case.

VI.

The Arizona Supreme Court did not hold that a juvenile does not have a privilege against self-incrimi-

nation. That court held only that the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant against self-incrimination. A preponderance of cases and the views of experts in this field will bear appellee out that to warn the child of this privilege will not enhance the effective operation of this specialized tribunal. There was no violation of due process in this case when appellants were not so warned.

VII.

Due process of law does not require appellate review from a juvenile court decision. The Arizona Juvenile Code does not provide for such, even though the order of a juvenile judge is subject to review by other means, such as certiorari. Since there is no right to appeal and since evidence presented in a juvenile proceeding is confidential and cannot be used in another court, due process of law has not been violated merely because no transcript has been made and because a discretion for the taking of such a transcript is vested in the juvenile judge.

ARGUMENT

I. THE ARIZONA JUVENILE CODE IS CONSITUTIONAL.

A. Background.

It may be said, with considerable justification, that the intentions of the originators of the first juvenile courts in this country toward the end of the 19th Century were benevolent. It is also axiomatic that prior to the inception of the juvenile court the punitive ri-

gors of the law were applicable to adults and children alike. With the advent of social work, as we know it today, which also had its inception during the last decades of the 19th Century, and the demand for social legislation during the same period, one can well fathom its resultant effect on the law in the field at hand. The increased recognition of a need for a more perfect balance between the general security of society and the individual led to the individualization of justice as to juveniles. The original juvenile court in Cook County, Illinois, as well as present day courts of a similar nature, function on a socio-legal basis, where the purpose is therapeutic and preventive, rather than retributive and punitive.

Since this appeal is based primarily on alleged deficiencies in the Arizona Juvenile Code and since that code was enacted in the same spirit which created that first juvenile court, emphasis must necessarily be placed on the basic philosophy behind the juvenile court, for a consideration thereof will have a direct and causative bearing on the meaning of due process as that constitutional phrase applies to juvenile court proceedings. Arizona's position is similar to that of other jursidictions in that it is felt that the function of the juvenile court will be destroyed if injected with the rights of due process as construed in the criminal system.

Roscoe Pound in commenting on the juvenile courts once stated:

> "What is meant by saying that the jurisdiction of the juvenile court is equity jurisdiction is well

brought out in the report of the Committee of the Chicago Bar Association in 1899. What the committee then said deserves to be repeated:

> 'The fundamental idea of the [juvenile court] law is that the state must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime .... It proposes a plan whereby he may be treated, not as a criminal, or legally charged with a crime, but as a ward of the state, to receive practically the care, custody, and discipline that are accorded the neglected dependent child, and which, as the act states,
>
> > 'shall approximate as nearly as may be that which should be given by its parents.'

"It is equity jurisdiction, the jurisdiction of the Chancellor in England, representing the King as parens patriae with respect to infants, the legal term for persons under age. As such it has five characteristics of equity jurisdiction: (1) It is relatively informal in its procedure — a characteristic going back to the origin of English equity, when one who sought relief in equity presented to the Chancellor an English bill, that is, an informal petition in English, whereas one who sought relief in a court of law had to buy a Latin writ and follow it up with a formal statement of his case (called a declaration), likewise in Latin. (2) As with all equity jurisdiction it is remedial, not punitive. (3) It acts preventively in advance of commission of any specific wrongdoing. (4) It employes administrative rather than adversary methods. (5) It can adapt its action to the circumstances of individual cases and so achieve a high degree of individualization, which is demanded by justice, if not always by security."[3]

[3] Pound, *The Juvenile Court and the Law*, 10 *Crime and Delinquency*, 490, 498.

Those characteristics remain extremely important today. The *parens patriae* doctrine remains a sound and purposeful doctrine. If the basic principle of *parens patriae* is accepted it is easily seen why informality is the norm. If such a system is to succeed in practice as much taint as possible of an adversary system must be avoided. It is no wonder that the following suggestion of the setting for a juvenile court hearing is made by the Advisory Council of Judges of the National Council of Crime and Delinquency:

> "The arrangement of the juvenile court should create a conference atmosphere, with the dignity which inspires respect for the court. Three basic principles are suggested in the design of a courtroom. (1) The bench or desk should not be elevated, the judge's chair should be at the same level as other chairs in the room. (2) The courtroom itself should be simple in design with no emphasis on formality. (3) Accommodations should be provided to seat the child and his parents as well as others present. If children and parents are grouped informally directly in front of and relatively close to the judge the arrangement may reduce tension and emphasize the conference atmosphere of the hearing." [4]

B. The Arizona Juvenile Code.

The Arizona Supreme Court decision below is not without precedent. Attacks, similar to the one herein involved, on juvenile legislation alleging the absence of certain constitutional guarantees, have, in the vast majority of cases, been rejected. As early as 1907 it

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[4] Guides for Juvenile Court Judges, prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency (1963), *Court Hearings*, p. 57

was held in the case of *Mill v. Brown,* 31 Utah 473, 88 Pac. 609 that:

> "Other constitutional and legal objections respecting the right to trial by jury, the want of arraignment in plea, the suspending of judgment or sentence, the manner of examination or trial, that the child is required to be a witness against himself, the want of notice to the parent, the dispensing with a warrant and arresting of the child and bringing him before the court, and all like questions, are fully, learnedly and satisfactorily discussed and decided against the contentions of appellant in the following cases:
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> "*Commonwealth v. Fisher* (Pa.) 62 Atl.198; *Milwaukee Industrial School v. Supervisors of Milwaukee County,* 40 Wis. 328, 22 Am. Rep. 102; *Prescott v. The State,* 19 Ohio St. 184, 2 Am. Rep 388; *Farnham v. Pierce,* 141 Mass. 203, 6 N.E. 830, 55 Am. Rep. 452; *State v. Home Society,* 10 N.D. 493, 88 N.W. 273; *Reynolds v. Howe,* 51 Conn. 472; *Ex parte Liddell,* 93 Cal. 633, 29 Pac. 251; *Ex parte Nichols,* 110 Cal. 651, 43 Pac. 9; *State v. Phillips,* 73 Minn. 77, 75 N.W. 1029; *In re Mason,* 3 Wash. St. 609, 28 Pac. 1025; *In re Kelley,* 152 Mass. 432, 25 N.E. 615; *State v. Kilvington* (*Tenn.*) 45 S.W. 433, 41 L.R.A. 284; *Matter of Knowack,* 158 N.Y. 482, 53 N.E. 676, 44 L.R.A. 699; *Jarrard v. The State,* 116 Ind. 98, 17 N.E. 912; *State v. Brown,* 50 Minn. 353, 52 N.W. 935; 16 L.R.A. 691, 36 Am. St. Rep. 651; *State v. Marmouget,* 11 La. 225, 35 South. 529." [5]

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[5] For more recent cases holding a juvenile proceeding may properly dispense with formal constitutional requirements relating to criminal proceedings, see: *Petition of Morin,* 45 N.H. 518, 68 A.2d 668 (1949); *Commonwealth v. Henig,* 200 Pa.Super. 614, 189 A.2d 894 (1963); *In re Bigesby,* D. C. App. 202 A.2d 785 (1964); *In re Rich,* 216 A.2d 266 (1966); *Ex parte Post,* 199 Misc. 1075, 107 N.Y.S.2d 896; *aff'd, Application of Post,* 113 N.Y.S.2d 475, 280 App. Div. 268; appeal dismissed, *Post v. Lyford,* 126 N.Y.S.2d 927; *White v. Reid,* 125 F.

The reason for the court's position in that case is easily seen in the following statement by the court as to juvenile laws:

> "Such laws are most salutory and are in no sense criminal and not intended as punishment, but are calculated to save the child from becoming a criminal."

Case law on the subject subsequent to that 1907 Utah case is replete with a reiteration of that same fundamental concept.[6] In the much cited juvenile case of *In re Holmes,* the Supreme Court of Pennsylvania used the following language:

> "Such claims [of unconstitutionality] however, entirely overlook, in our opinion, the basic concept of a juvenile court. Proceedings in such a court are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and the rehabilitation of the minor child. Their purpose is not penal but protective, —

Supp. 647 (D.C.D.C.) (1954); *In re Lindh,* 11 Utah 2d 385, 359 P. 2d 1058 (1961); *Hampton v. Stevenson,* 210 Ga. 87, 78 S.E.2d 32 (1953); *In re T.W.P.,* Fla. App. 184 So.2d 507 (1966); *Minor Children of F.B. v. Caruthers,* 323 S.W.2d 397 (1959); *U.S. v. Borders,* 154 F.Supp. 214 (D.C.N.D. Ala.) (1957), *aff'd Borders v. U.S.,* 5 Cir. 1958, 256 F.2d 458.

[6] In upholding the constitutionality of juvenile court acts, the courts have also emphasized that not only are the proceedings non-criminal, but also that the institution to which the delinquent is committed is not of a penal character. For example see *Ex parte Januszewski,* C. C. Ohio, 196 F. 123 (1911); *Ex parte State ex rel. Echols,* 245 Ala. 353, 17 So.2d 449 (1944); *Dendy v. Wilson,* 142 Tex. 460, 179 S.W.2d 269 (1944), 151 A.L. R. 1217; *Wissenberg v. Bradley,* 209 Iowa 813, 229 N.W. 205 (1930), 67 A.L.R. 1075; *Bryant v. Brown,* 151 Miss. 398, 118 So. 184 (1928), 60 A.L.R. 1325; *Ex parte Daedler,* 194 Cal. 320, 228 P.467 (1924); *Cinque v. Boyd,* 99 Conn. 70, 121 A. 678, (1923); *Ex parte* King, 141 Ark. 213, 217 S.W. 465 (1919); *Ex parte Birchfield,* 90 O.Cr. 197, 212 P.2d 195 (1949); *White v. Reid,* 125 F. Supp. 647 (D.C.D.C.) (1954). Other courts have indicated that juvenile laws do not contemplate restraining the natural liberty of children but rather the placing of them under the natural restraint similar to that which a parent exercises over a child. *See In re Santillanes,* 47 N.M. 140, 138 P.2d 503 (1943).

aimed to check juvenile delinquency and to throw around a child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the state acting as *parens patriae*. The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life. . . . No suggestion or taint of criminality attaches to any finding of delinquency by a juvenile court. The conception that children are regarded as wards of the state is not one of recent origin; indeed from the very earliest times children in England were regarded as wards of chancery, and the chancellor exercised the prerogatives of the Crown in acting for the care, treatment and protection of unfortunate minors and placing them under proper guardianship." 379 Pa. 599, 109 A.2d 523 at 525 (1954), *cert. denied* 348 U.S. 973 (1955).

This same philosophy prompted the Arizona Supreme Court to hold as it did in the *Gault* decision. The Arizona Supreme Court did hold that a juvenile is entitled to due process in a juvenile hearing (R. 89, 90), but recognized that the problem was in ascertaining the particular elements which constitute due process in a juvenile hearing. (R. 90) [7]

It is generally recognized that a state legislature has the power to say that an act done by a child shall not be a crime or punishable as such even though the same act constitutes a crime if done by an adult.[8] The State

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[7] The Arizona Supreme Court had already held due process as being applicable to juveniles in prior court decisions. See *Arizona State Department of Public Welfare v. Barlow*, 80 Ariz. 249, 296 P.2d 298 (1956).

[8] *State v. Gronna*, 79 N.D. 673, 59 N.W.2d 514 (1953).

of Arizona has legislated on this subject and by law "An adjudication by a juvenile court upon the status of a child shall not operate to impose any civil disability nor shall a child be deemed a criminal by reason thereof. An adjudication by the juvenile court shall not be deemed a conviction, nor shall a child be charged with or convicted of a crime in any court, except where the juvenile court refuses to suspend criminal prosecution."[9]

The Arizona Supreme court recognized that a juvenile proceeding is a noncriminal proceeding.[10] (R. 94) We submit the "fundamental fairness concept" embodied in the Fourteenth Amendment is satisfied in a juvenile court proceeding even though normal constitutional safeguards applicable in criminal jurisprudence, are not applied in a juvenile court. Further, the Arizona supreme Court subscribes to the view that the Arizona Juvenile Code is constitutional in terms of the requirements of due process of law.

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[9] A.R.S., § 8-228 (A).

[10] For recent decisions holding a juvenile proceeding is not a criminal procedure see *In re Whisaker*, 134 F.Supp. 864; (D.C.D.C.) (1955); *In re Poff*, 135 F. Supp. 224 (D.C.D.C.) (1955); *In re Dargo*, 81 Cal. App. 2d 205, 183 P.2d 282 (1947); *In re O'Day*, 83 Cal.App.2d 339, 189 P.2d 525 (1948); *In re Magnuson*, 110 Cal. App.2d 73, 242 P.2d 362 (1952); *Dart v. Mecum*, 19 Conn.Supp. 428, 116 A.2d 668 (1955); *Hewlett v. Probate Ct.*, 66 Idaho 690, 168 P.2d 77 (1946); *In re Tillotson*, 225 L.A. 573, 73 So.2d 466 (1954); *State v. David*, 226 L.A. 268, 76 So.2d 1 (1954); *State v. Harold*, 364 Mo. 1052, 271 S.W.2d 527 (1954); appeal transferred 281 S.W.2d 605; *Application of Giroffi*, 130 N.Y.S.2d 28, 283 App.Div. 890 (1954); *Ex parte Lewis*, 850 Okla.Cr. 322, 188 P.2d 367 (1947); *In re Mont*, 175 Pa.Sup. 150, 103 A. 2d 460 (1954); *State v. Ferrell*, 209 S.W.2d 642 (1948); *State v. Lazaros*, 228 S.W.2d 972 (1950); *State ex rel Henkle v. Skeen*, 75 S.E.2d 223 (1953), *cert. denied Henkle v. Skeen*, 73 S.Ct. 954, 345 U.S. 967, 97 L.Ed. 1385; *Cope v. Campbell*, 175 Ohio St. 475, 196 N.E.2d 457 (1964); *In re T.W.P.*, Fla.App. 184 So.2d 507 (1966); See also *Pee v. U.S.*, 107 U.S.App.D.C. 47, 274 F.2d 556 (1959) wherein the court listed decisions eminating from the highest courts of forty-two states holding to the same effect.

II. GERALD FRANCIS GAULT WAS PROVIDED WITH A FAIR AND PURPOSEFUL HEARING IN ACCORDANCE WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

A. Notice of Charges and Hearing.

Appellants' Brief (p. 30) alleges that:

> "Notice to be fully effective must contain at least three ingredients: (1) it must state what acts are complained of (2) it must state what statute or applicable rule of law such acts violate, and (3) it must give some indication of the consequences of a finding against the accused. All of these were absent in the proceedings below."

The court below most assuredly held that a fair hearing encompasses notice being given to the parent or guardian and anyone whose rights may be affected by the court's determination. (R. 91) The Arizona court also held that such notice must be given a reasonable time prior to the hearing. (R. 91) It was further held that as to the contents of the notice, the child and parent must be informed of the alleged act of delinquency before an adjudication of the delinquency is made. (R. 91) Appellants have arrived at the rather curt conclusion that the notice given to Mrs. Gault was non-official. (Appellants' Opening Brief, p. 30) Indeed, notice of the June 9th hearing, although not written, was communicated to Mrs. Gault by Deputy Probation Officer Flagg, who was certainly on "officer" involved in the case.[11]

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[11] See also *In re Patterson*, 27 Cal.Reptr. 10, 377 P.2d 74 (1962) where the question arose as to whether notice, by telephone, to a juvenile's only available parent the day before a detention hearing, was sufficient notice. The court held that it was and that it constituted due process of law. The California Supreme Court quoted the following cases: *Drummy v. State Bd. of Funeral Directors*, 13 Cal.2d 75, 80 [2] 87 P.2d 848; *Litchfield v. County of Marin*, 130 Cal.App.2d 806, 813 [7] *et seq.*, 280 P.2d 117.

The day before the first hearing, Deputy Probation Officer Flagg orally told Mrs. Gault why Gerald was being detained for the hearing. (R. 44) In Flagg's own words, he "explained the whole thing to her . . . " and that he "told her why Jerry was there . . ." (R. 44) Mrs. Gault confirmed that this conversation took place. (R. 29) As to further notice of the charges, Mrs. Gault testified at the habeas corpus hearing that at the June 9th hearing she was informed of the general nature of the charges (R. 38) and that she knew that it concerned an allegedly indecent phone call. (R. 38) This information conveyed to Mrs. Gault, supplemented the oral notice she was given the previous day by Deputy Probation Officer Flagg. Assuming Gerald had denied the commission of the act involved (thereby necessitating a full adjudicatory hearing) *then* the Gaults would have been entitled to a further reasonable period of time in which to prepare a defense. The necessity for this in the present case was obviated by Gerald's admission on June 9th.

As to a possible requirement of a juvenile court judge to warn parents of possible consequences of a juvenile hearing, appellee knows of no such rule, and appellants have cited no cases on the subject. However, even if there was such a requirement, the Gaults certainly had knowledge of possible consequences since Judge McGee had warned them of such during February of 1964. (R. 66)

The contention has also been made by appellants that Judge McGee testified at the habeas corpus hearing that he had based his finding of delinquency not only on the boy's use of lewd language but also on the boy's

habitual involvement in immoral matters (Appellants' Opening Brief, p. 32) Judge McGee had referred to the July 1962 incident pertaining to a theft which never resulted in a hearing. However, in continuing, he stated that in his mind the decision of delinquency was done on the admission of Gerald Gault. (R. 65) A clear inference of this testimony by Judge McGee is that the *disposition* of the Gault matter rested not only on the lewd telephone call but on other factors as well. Also, there was ample proof to sustain the judgment of the court without the evidence in question.[12] In light of the judge's own statement, that he had based his decision on the admitted phone call plus the fact that Gerald had violated his probation, no error is discernable.

It is appellee's position that the Arizona Juvenile Code, as interpreted by the Arizona Supreme Court, provides for adequate notice of the charges and hearing, and that appellants certainly received adequate notice in this case.

B. The Right to Counsel.

The question of whether an infant has the right to appointment of counsel in a juvenile court proceeding must be viewed in the light of the nature of the hearing itself. Appellants' reliance on such cases as *Gideon v. Wainwright,* 372 U.S. 335 (1963) and *Powell v. Alabama,* 278 U.S. 45 (1932) not only indicates their

[12] For cases holding a judge's reliance on a social report non-prejudicial error if sufficient traditional evidence exists, see: *In re Mont.,* 175 Pa.Super. 150, 103 A.2d 460 1954; *In re Brown,* 201 S.W.2d 844 (Tex.Civ.App) (1947); *Harry v. State,* 246 Wis. 69, 16 N.W.2d 390 (1944); *Williams v. State,* 219 S.W.2d 509, 515 (Tex.Civ.App) (1949); *In re Garcia,* 201 Cal. App.2d 662, 20 Cal.Rptr. 313 (1962).

zeal to equate a juvenile hearing with a criminal trial[13] but further they ignore the very premise upon which the Arizona Supreme Court resolved this issue. The entire juvenile court concept endeavors to remove all taint from an adversary system for the obvious reason that such a system would undermine the informal approach to juvenile problems. The philosophy of shielding children from traditional criminal court procedures, their atmosphere and concomitants is still an admirable approach of juvenile jurisprudence. The Arizona Supreme Court, in holding that due process does not require that infants have a right to counsel, aligns itself with those vast majority of jurisdictions which have similarly held. The decisions emanating from those jurisdictions are legion.[14]

In *Shioutakon v. District of Columbia,* 236 F.2d 666 (D.C.Cir.1956), cited by appellants as being for the proposition that the right of a child and his parents to the assistance of counsel in a juvenile proceeding is founded in due process (Appellants' Opening Brief, p. 39), the United States Court of Appeals, District of Columbia Circuit indicated that their decision, that a juvenile in juvenile court must be advised of a right to counsel or to have counsel appointed in his behalf, was not based on a consideration of due process but

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[13] Even this Court in *Kent v. United States,* 383 U.S. 541 (1966), noted that juvenile court proceedings are designated as civil rather than criminal.

[14] See for instance *People v. Dotson,* 46 Cal.2d 891, 299 P.2d 875 (1963); *People ex rel Weber v. Fifield,* 136 Cal.App.2d 741, 289 P.2d 303 (1955); *White v. Reid,* 125 F.Supp. 647 (D.C.D.C.) (1954); *In re Poff,* 135 F.Supp. 224 (D.C.D.C.) (1955); *Akers v. State,* 115 Ind.App. 195, 51 N.E.2d 91 (1943); *People v. Lewis,* 60 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001 (1932); *cert. denied* 289 U.S. 709, 77 L.Ed. 1464, 73 S.Ct. 786; *In re Holmes,* 379 Pa. 599, 109 A.2d 523 (1954), *cert. denied* 348 U.S. 973, 99 L.Ed. 757, 75 S.Ct. 535; *Rooks v. Tindall,* 138 Ga. 63, 76 S.E. 378 (1912).

was based on an interpretation of the applicable statute (see footnote 18 on page 669 of that opinion).

The decision in *Pee v. United States,* 107 U.S.App. D.C. 47, 274 F.2d 556 (1959) handed down three years later by the same court was to the effect that, "The constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment, and not by the direct application of the clauses of the Constitution which in terms apply to criminal cases." (274 F. 2d at 559) *Black v. United States,* 383 U.S. 541 (1966) also cited by appellants concerned a "waiver" proceeding identical to the issue in *Kent v. United States,* 383 U.S. 541 (1966) recently decided by this Court. The *Kent* decision would appear to have been based, insofar as a "waiver" was concerned, on a construction of the District of Columbia's Juvenile Court Act and not on the basis of constitutional guarantees.

Appellants further contend that although a judge may see to it that a juvenile is dealt with justly and fairly he "cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional." (Appellants' Opening Brief, p. 38) Apparently forgotten, however, is the intake procedure of the juvenile court itself. Juveniles are brought before members of the probation staff to the court. Not only do these professionals make social investigations for the court but they do counselling as well.

Further, it must be realized that few of the juveniles

brought before a juvenile court deny the offense named or involvement therein.[15]

In deciding whether procedural fairness demands an attorney it must be asked whether an attorney would aid a juvenile hearing and if so to what effect. An Arizona Juvenile Judge, commenting on the need for appointed counsel in juvenile hearings has stated:

> "As one can gather, the writer does not believe that there is much to be gained by any insistence upon legal counsel in juvenile court. Lawyers are so indoctrinated in the adversary procedure and philosophy that the writer believes that for the most part it will be impossible for them to take an active part in a juvenile court hearing without destroying to some extent the nonadversary nature thereof."[16]

If the concept of procedural due process requires the appointment of counsel the resultant situation will most certainly, in many instances, result in the juvenile court being relegated to a junior criminal court. If the juvenile in every instance is entitled to counsel, who will represent the state? If the local prosecutor must do so, is it not true that the proceeding has acquired all the aspects of an adversary proceeding? It is the contention of appellee that this is exactly what must be avoided.

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[15] Judge Paul W. Alexander, Judge of the Court of Common Pleas of Lucas County, Ohio, estimated that ninety-nine percent of the children brought before juvenile judges admitted involvement. *Alexander, Constitutional Rights In Juvenile Court,* 46 A.B.A.J. 1206 at 1208 (1960). In *Guides For Juvenile Court Judges,* it is stated that "the child in the vast majority of cases involving delinquency will admit the allegations in the petition." *Ibid.* p. 60.

[16] *Maloy, Juvenile Court—A Labyrinth of Confusion For The Lawyer,* 4 Ariz. L.Rev. 1 at p. 23 (1962).

As previously noted, the Arizona Supreme Court has declared that in those cases, where, in the presiding judge's discretion, an attorney is needed, one may be appointed. Such a tailor made approach to each individual case would be far more beneficial than a rule absolute as contended by appellants.

C. Confrontation and Cross-Examination

The wide proclamations in appellants' brief in regard to confrontation and cross-examination, while basically a correct analysis of the law in criminal cases and in administrative hearings under different circumstances, have not been correlated to the fact situation involved in this appeal. Appellants have diminutized the fact that at the June 9, 1964, hearing in the presence of Judge McGee, Gerald admitted making the telephone call and admitted saying some of the lewd words. (R. 45, 47, 57) As previously noted it is a misstatement of the record to allege that "Gerald Gault had not admitted to him (Probation Officer Flagg) making any lewd or indecent remarks over the telephone but said the other boy engaged in the conversation . . . " (Appellants' Opening Brief, p. 48) The actual statement by Probation Officer Flagg was that at the June *15th* hearing Gerald did not admit any of the more serious lewd statements (R. 59) but at the June 9th hearing Gerald had so confessed. (R. 45, 47) We are, therefore, dealing with a case where the infant has made an admission. This is a factor completely nonexistent in the cases cited by appellants in their argument of the immediate issue. Nor do those excerpts from *Wigmore on Evidence* (Appellants' Opening Brief, pp. 44, 45) address themselves to situations where the juvenile admits the fact alleged.

In the relatively early case of *People v. Lewis,* 260 N.Y. 171, 183 N.E. 353 (1932), the Court of Appeals of New York was faced with a strikingly similar situation and stated:

> "Even in a criminal trial the confession which requires corroboration to sustain conviction is only the extra-judicial confession, not the admission made in open court on the witness stand. If the hearing here had been a criminal trial its sole defect would have been the failure to warn against self-incrimination. But it was not a criminal trial and there was no defect." Id. at 354)

Also in the case of *In re Patterson,* 27 Cal. Reptr. 10, 377 P.2d 74 (1962) the Supreme Court of California had the same issue before it. The court responded as follows:

> "In addition to the report that was received in evidence when the minor appeared before the court, the charges were read, and he admitted their truth in open court. The testimony of an accused at his trial not only establishes the corpus delicti of the offense but is sufficient to justify a judgment. (Citations omitted) . . . It is likewise settled that the admission by a minor of the charges against him in open court is the equivalent of a plea of guilty and therefore raises no issue of fact and precludes the necessity for the presentation of evidence in support of the allegations contained in the petition. (*In re Dargo,* 81 Cal.App.2d 205, 208[4] *et seq.*, 183 P.2d 282 [hearing denied by the Supreme Court]; *Cf. People v. Johns,* 173 Cal.App.2d 38, 42 [2, 3] 343 P.2d 92)." (377 P.2d at 77)[17]

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[17] As to the admissibility of juvenile admissions in juvenile courts generally, see *Juvenile Delinquency—Evidence,* 43 A.L.L.2d 1133, § 4.

We submit the court below was correct in its decision that the relevancy of confrontation only arises where the charges are denied. Appellee fails to see any bearing in appellants' contention that "this attitude turns topsy-turvy the concept of the juvenile hearing as an adjudicatory proceeding to determine the facts based on evidence" (Appellants' Opening Brief, p. 49) especially in light of appellants' earnest attempt to equate a juvenile hearing to a criminal proceeding where admissions also tend to obviate any issue of fact.

Appellee further fails to see the value of appellants' contention (Appellants' Opening Brief, Note 35) that confrontation and cross-examination would rarely become relevant under the lower court's decision and would have the dangerous consequence of reducing the adjudicatory hearing to an insubstatnial stage in the juvenile court process. It is quite obvious that this was not the intent of the court below nor will the concomitant result be as hypothicated by appellants. It is submitted that the above statement by appellants avoids the significance and import of the infant's admission.

D. The Privilege Against Self-Incrimination.

The Arizona Supreme Court held, "We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination." (R. 93)

It will be noted that the court did not hold the infant did not have such a right but only that the juvenile

judge did not have to advise him of such. Appellee is aware of the decision rendered by this Court in *Miranda v. Arizona,* 16 L.Ed.2d 694 (1966) wherein the Court held that "in order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." The *Miranda* case, of course, concerned itself with the privilege against self-incrimination during a period of custodial interrogation of an adult by police officers. Appellee is not of the opinion, however, that the strict requirement of informing the juvenile of a right to remain silent should be exacted during a juvenile court hearing. We are not here dealing with an "adversary system of criminal justice" as referred to in *Miranda.* We are dealing with a non-criminal proceeding where an effort should be made to have the juvenile talk fully. As was stated by one juvenile judge:[18]

> "The first purpose of a hearing is to learn the truth. Which is the greater justice to the child: to teach him honesty and encourage him to reveal the truth or to pave the way for him to lie and conceal the truth? Doctors diagnose and treat the child whose body is sick. The child is never encouraged to deceive the doctor or to evade his questions. Must there be a different ethic when a child's behavior is sick? We lawyers are taught to look upon the protections of the Bill of Rights as a basic ingredient of justice as commonly conceived. Of course we all applaud justice as a noble concept. But in criminal court stark justice, for all its virtues, is an arid, cold concept. There naked justice is hard, barren, uninviting

[18] *Alexander, Constitutional Rights In Juvenile Court,* 46 A.B.A.J. 1206, at 1209 (1960).

to many. Such justice can be cruel. It appeals mainly to the vindictive. That is because it is punitive. We administer it by punishing the guilty. To punish means to hurt; to inflict pain. The word pain, punch, penalty, come from the same root as punishment. Frankly, justice is unattractive to many clients of juvenile courts. Parents seldom want justice for their children. It may be all right for other people's children, but not for their own; nor for themselves. If all we want is simply justice it could just as well be meted out to children in any conventional court. The juvenile court was not created to administer justice to children. It was meant to go very much further than that. Its efforts were meant to safeguard those supra-constitutional rights mentioned above."

It is even stated in *Procedure and Evidence In The Juvenile Court*, Advisory Council of Judges of the National Council on Crime and Delinquency (1962) at p. 28:

"However, there is a powerful argument against transplanting the privilege to juvenile proceedings — that it interferes with a therapeutic approach. To establish rapport with the child, it is of course essential that the judge encourage him to talk freely. The court can often create an atmosphere that induces him to talk even if he is initially reluctant. The U.S. Children's Bureau does not recommend that the judge inform the child he need not testify, but merely states that the child should not be required to testify 'over the objection of his parents, guardian or counsel.' "[19]

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[19] See also *Paulsen, Fairness to the Juvenile Offender*, 41 Minn. L.Rev. 547, 561 (1957):

"A rule which requires alleged delinquents to be told that they need not testify at the hearing would be most unfortunate. The hearing ought to be

Procedural due process is not violated when the infant is not warned of a right against self-incrimination. The Arizona Supreme Court is correct in this regard.

E. Right to Appellate Review and to A Transcript of the Proceedings.

The Arizona Supreme Court held that there is no right of appeal from a juvenile court order. The court based its decision on a view previously propounded by the Arizona Court of Appeals in *Ginn v. Superior Court, in and for the County of Pima,* No. 1CA-CR 23, 404 P.2d 721 (1965) wherein that latter court held that (1) an appeal is a matter of privilege granted either by the Constitution or by statute, and the right to appeal does not exist unless expressly and affirmatively granted. (2) The Arizona Juvenile Code does not specifically provide for an appeal. (3) The general statutes relating to appeal have no application. (4) Juvenile Court Orders are reviewable by certiorari.

The case law on this subject is to the effect that a right to review is not essential to due process of law, but is a matter of grace only. [20]

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a part of the treatment process, a function which it certainly cannot perform if the child is told that he need not talk to the judge or to anyone else about the situation in which he finds himself."

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[20] See *Luckenbach S.S. Company, Inc. v. U.S.*, 272 U.S. 533, 47 S.Ct. 186, 71 L.Ed. 394 (1926); *State of Ohio ex rel Bryant v. Akron Metropolitan Park Dist. et al.*, 281 U.S. 74, 50 S.Ct. 228, 74 L.Ed. 710 (1920); 66 A.L.R. 1460; *Depauw University v. Brunk*, D.C., 53 F.2d 647 (1931) *aff'd* 285 U.S. 527, 52 S.Ct. 405, 76 L.Ed. 924; *In re Foote*, 129 Misc. 2, 221 N.Y.S. 302 (1927); *City of Portland v. Miami Corp.*, 132 Ore. 660, 285 Pac. 815 (1930); *Beacon Lumber Co. v. Brown*, 14 S.W.2d 1022 (1929); *Rudacille v. State, Comm. on Conservation & Development, etc.*, 155 Va. 808, 156 S.E. 829 (1931); *Ex parte Packer*, 136 Ore. 159, 296 Pac. 234 (1931).

This Court stated in the case of *McKane v. Durston*, 153 U.S. at 687:

> "A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is committed, was not at common law and is not now a necessary element of due process of law. It is wholly within the discretion of the state to allow or not to allow such a review. A citation of authorities upon the point is unnecessary. It is, therefore, clear that the right of appeal may be accorded by the state to the accused upon such terms as in its wisdom may be deemed proper."

This principle was affirmed in *Griffin v. Illinois*, 351 U.S. 12, 100 L.Ed. 91, 76 S.Ct. 585, 55 A.L.R.2d 1055 and again in *Draper v. Washington*, 372 U.S. 487, 9 L. Ed.2d 899, 83 S.Ct. 774.

Since a decision of a juvenile court in the State of Arizona is reviewable, appellee fails to see how appellants can maintain that a juvenile proceeding in Arizona is not subject to correction in the case of a possible abuse of judicial discretion.

As to the requirement of a record, since there is no right to appeal, and since the evidence adduced at a juvenile hearing is of a confidential nature, the opinion of the Arizona Supreme Court is correct in holding there is no requirement that a transcript be made but that the juvenile court has the discretion to order or deny the taking of a transcript. In a case such as this appellee knows of no law requiring a holding to the contrary.

The Arizona law as interpreted in the decision below did not deprive appellants of due process of law in regard to the matters of appeal and a transcript.

CONCLUSION

The judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

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